



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/52958/2021
UI-2022-001354; IA/08017/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 18th July 2022**

**Decision & Reasons Promulgated
On 1st September 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

L S

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondent: Ms K Wass, instructed by David Benson Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State for the Home Department ('SSHD'), I shall refer to the parties as in the First-tier Tribunal. The appellant's appeal against deportation was allowed by First-tier Tribunal Judge L K Gibbs ('the judge') on asylum and human rights grounds.
2. The SSHD appealed on the grounds the judge failed to give adequate reasons for findings on a material matter. The grounds submit that, given the appellant's prolific offending over a period of 12 years, the passage of

time alone was insufficient to demonstrate the appellant no longer posed a danger to the community. Further, the judge failed to make a finding on the appellant's credibility and failed to give adequate reasons for accepting the evidence of Mr Yogalingam in light of the findings of the previous panel hearings. Permission was granted by First-tier Tribunal Judge ID Boyes on 20 May 2022 on all grounds.

3. Ms Everett relied on the grounds and submitted the judge had failed to make findings on a material matter because she had failed to grapple with the appellant's credibility issues. There was no summary of the evidence heard or an assessment of why the evidence of Mr Yogalingam was deserving of significant weight. In a deportation appeal where there is significant public interest in removal, the judge failed to explain why she accepted the appellant's evidence. The decision was very brief and the appellant had been found to lack credibility in a previous hearing. There were no reasons for why the appellant's claim was now credible.
4. Ms Wass accepted the decision was brief but, given the extensive case management, the issues were relatively narrow and there was sufficient detail and reasoning. The respondent accepted at [20] that she had failed to discharge her duty to verify the documentary evidence. The appellant's account of what occurred at the Sri Lankan High Commission ('SLHC') was accepted. At [35], the respondent did not dispute that documents were shared with the SLHC when the appellant attended to obtain an emergency travel document.
5. Ms Wass relied on the rule 24 response and submitted the judge had provided adequate reasons. The appellant had previously been granted asylum and the judge accepted his evidence in relation to his private life. The judge clearly reminded herself of the starting point and the previous credibility findings at [31] and she placed weight on those findings. There was no lack of reasoning at [28].
6. Ms Wass submitted the judge did not solely rely on the evidence of Mr Yogalingam. She also took into account the level of his support for the appellant and that he corroborated the appellant's claim to be active in the TGTE at [32]. There were letters of support and photographs in addition to the oral evidence of Mr Yogalingam. The judge gave adequate and detailed reasons for the weight she attached to Mr Yogalingam's evidence.
7. The judge's credibility findings were inherent within her findings on the appellant's sur place activities and his account as a whole. At [28], the judge found that the appellant's acceptance of his criminality and lack of offending for nearly ten years lent credibility to his evidence that he had changed and matured. There was no need to make a finding on the appellant's account of what happened at the SLHC because it was accepted by the respondent.

8. Ms Wass submitted that any error was not material because at the [35] the judge found that the appellant's account of what occurred at the SLHC was consistent with the Tribunal's findings in KK and RS (Sur place activities, risk) Sri Lanka CG [2021] UKUT 130 (IAC). Even if the appellant did not have a history in Sri Lanka and his arrest warrant was false, he would be at risk on return because of his sur place activities with the TGTE and his attendance at the SLHC. Article 3 stands and falls with the asylum claim and there was no need to consider Article 8 if the appeal was allowed under the Refugee Convention. Whilst the decision was brief it was sufficiently reasoned. There was no material error of law.
9. Ms Everett relied on her previous submissions and added there were no reasons for accepting the appellant's evidence that he would be interviewed at the airport in Sri Lanka and his photograph was taken at the SLHC.

Conclusions and reasons

10. Ms Everett did not challenge the judge's finding that the section 72 certificate should not be upheld. I am satisfied the judge gave adequate reasons for departing from previous decisions on this point. The appellant was not sentenced to a period of imprisonment of over two years. In addition, the judge properly took into account that the appellant had not offended for nearly ten years and that he had changed and matured. Her conclusion at [28] was open to her on the evidence before her and her reasons were adequate.
11. I find the judge gave adequate reasons for the weight she attached to Mr Yogalingam's evidence: he was well known to the Tribunal and was found to be a reliable witness in KK. In addition, he had provided a level of support to the appellant not only in attending the hearing but also in providing three letters of support. Mr Yogalingam's evidence was that the appellant was an active and valued member of the TGTE. It was open to the judge accept his evidence and she gave adequate reasons for doing so.
12. The judge then went on to consider Mr Yogalingam's evidence in the context of the evidence as a whole. She concluded that it corroborated the appellant's evidence and was consistent with the photographs of the appellant at various TGTE events. The judge quoted the evidence upon which she relied to find the appellant was active within the TGTE and she properly applied country guidance.
13. In any event, the judge found that the appellant would be at risk because of his activities with the TGTE in the UK and his interview at the SLHC. The Sri Lanka authorities were aware the appellant had previously been granted asylum.

14. I find the judge's conclusions were open to her on the evidence before her and she gave adequate reasons for her conclusions. There was no material error of law in the judge's decision. The SSHD's appeal is dismissed.

Notice of Decision

The appeal is dismissed.

J Frances

Signed

Date: 19 July 2022

Upper Tribunal Judge Frances

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.